



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 07 2014

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7675 1469
RETURN RECEIPT REQUESTED

Tony Day, Owner
D Livestock, Inc.
6585 Pumping Station Road
Elizabeth, Indiana 47117

Subject: Amended Information Request under
Section 308 of the Clean Water Act, 33 U.S.C. § 1318(a)
Docket No. V-W-14-308-03

Dear Mr. Day:

This letter and enclosure modifies the original Information Request dated January 8, 2014 for certain information from D Livestock, Inc. (D Livestock or you) in connection with your ownership or operation of two swine facilities. This amended Information Request clarifies that your facilities are located at 5454 Rogers Campground Road SE, Elizabeth, Indiana and the new swine facility is located at 4714 E. Highway 11 SE, Laconia, Indiana. U.S. Environmental Protection Agency is authorized under Section 308 of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1318, to require reports and other information necessary to carry out the objectives of the Act. Accordingly, pursuant to Section 308 of the CWA, you are directed to provide EPA with the information requested in the enclosure.

Pursuant to Section 308(b) of the CWA, you may assert a business confidentiality claim covering all or part of the information requested herein in the manner described in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in Subpart B, 40 C.F.R. Part 2. If you do not assert a business confidentiality claim when you submit the information, EPA may make the information available to the public without further notice to you. This request is not subject to the Paperwork Reduction Act, U.S.C. § 3501 *et seq.*, because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.

Compliance with this information request is mandatory. Failure to respond fully to this enclosed information request may subject you to an enforcement action by EPA pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. Knowingly providing false information, in response to this request, may be actionable under 18 U.S.C. § 1001. We may use the requested information in an administrative, civil or criminal action.

All statements provided must be signed by your duly authorized agent and must include certification language required in Section V, paragraph 2 of the enclosed information request. As agreed, please respond in writing to the information request, on or before March 18, 2014 to the following recipient:

U.S. Environmental Protection Agency, Region 5
Water Enforcement & Compliance Assurance Branch (WC-15J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
Attention: Joan Rogers, Environmental Scientist

Should you have any questions pertaining to this matter, please contact Joan Rogers of my staff, at (312) 886-2785.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosure

cc: Kyle A. Lansberry, Attorney
Lewis and Wagner, LLP
501 Indiana Avenue, Suite 200
Indianapolis, Indiana 46202

1. You must respond to this Information Request on or before March 18, 2014. Submission instructions are in Section V of this Information Request.
2. You must respond separately to each of the requests and subparts of each of the requests. Precede each answer with the number of the request to which it corresponds. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the request to which it corresponds.
3. For each request, identify the person(s) who provided information used or considered in responding to that question, as well as each person consulted in the preparation of that response.
4. If you do not have documents responsive to a particular request, state in your written response that you do not have responsive documents, and provide an explanation of why such documents are unavailable, if applicable.
5. If information and/or documents are not known or not available to you as of the date of your response to this information request and should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of your response that any portion of the submitted information is false or

misrepresents the truth, you must notify EPA of this fact as soon as possible and provide EPA with a corrected response.

6. Where this information request seeks data or records, provide such information in electronically editable, tabular format (e.g., Excel spreadsheet, etc.) where that data already exists in, or can be organized and provided in, electronically editable, tabular format.
7. You must keep the reports and all records reviewed or generated in the course of responding to this Information Request until EPA informs you in writing that you are no longer required to keep the reports and records, or for three years, whichever is sooner.

III. DEFINITIONS

All terms used in this information request have their ordinary meaning unless such terms are defined in the CWA and/or its implementing regulations, and in which case the statutory and/or regulatory definitions apply.

1. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any documents.
2. The term "agreement" shall mean any written document (e.g., contract, lease memorandum, of understanding, agreement, in principle, letter, etc.) or verbal exchange manifesting mutual assent on the part of two or more persons. If asked to "identify and produce" (as defined below) the agreement, you must not only include the main text of the agreement, but also include all exhibits, attachments, and documents incorporated by reference.
3. The terms "relate to" or "pertain to" (or any form thereof) shall mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.
4. The term "identify" means to provide:
 - a. With respect to a natural person, that person's name, job title, business address, and telephone number;
 - b. With respect to a corporation, partnership, business trust or other association, or business entity (including a sole proprietorship), its full name, address, legal status, and form (e.g., corporation, partnership, etc.), its owners, members, officers and directors, and a brief description of its business; and

- c. With respect to a document, its customary business description, date, author's identity, addressor, addressee and/or recipient, and the subject matter.
5. The term "facility" or "facilities" means:
- a. Any animal feeding operation(s) (AFO), as defined at 40 C.F.R. § 122.23(b)(1), owned or operated by you; and
 - b. Any associated land application area(s)/site(s), including any field, land and/or property owned, operated, leased, rented, and/or otherwise used by you or under your control that is or may be used to apply manure, litter, and/or process wastewater. *See* 40 C.F.R. § 122.23(b)(3).
6. The term "manure" includes animal waste (i.e., solid or liquid animal waste), bedding, compost, and raw materials or other materials (used in or otherwise resulting from the confinement of animals) commingled with manure or set aside for disposal, and includes land application.
7. The term "owner and/or operator" means any person who owns, leases, operates, controls, or supervises the operation of a point source.
8. The term "person" means any individual, business, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.
9. The term "process wastewater" means water directly or indirectly used in the operation of the facility for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facility aspects/structures; direct contact swimming, washing or spray cooling of animals; and dust control. "Process wastewater" also includes any water (e.g., precipitation, water used in the facility's operation, etc.) which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, bedding, or other material or product used in, or resulting from, the confinement of animals.
10. The terms "you" or "your" or "D Livestock" refers to D Livestock, Inc. and to any agents, employees, contractors, or other entities that performed work or acted in any way on behalf of, or at the direction of D Livestock.

IV. INFORMATION REQUEST

Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, provide the following information to EPA. Provide information for the last five years from the date of receipt of this Information Request, unless a particular request specifies a different time period.

1. Provide a copy of D Livestock's Articles of Incorporation.

For the 5454 Rogers Campground Road SE, Elizabeth, Indiana Facility (5454 RCR Facility):

2. Identify the owner of the animal confinement buildings, animals, and the land application fields where manure or process wastewater from the 5454 RCR Facility is applied. Provide a copy of all supporting documents.
3. Identify the operator of the animal confinement buildings, the animals, and the land application fields where manure or process wastewater from the 5454 RCR Facility is applied. Provide a copy of all supporting documents.
4. Provide a copy of the most current Comprehensive Nutrient Management Plan (CNMP) or Nutrient Management Plan (NMP).
5. If not included in the CNMP or NMP, provide the following:
 - a. copies of the lease or rental agreements for any land application fields where manure or process wastewater has been or will be applied;
 - b. copies of the most recent soil analysis for any field that received manure or process wastewater within the previous five years or will receive manure or process wastewater in the next growing season;
 - c. copies of the manure analysis for the previous five years;
 - d. description of the methods and copies of records for the calibration of land application equipment; and
 - e. copies of maps of the land application areas and any setbacks and surface drainage locations.

For the 4714 E. Highway 11 SE, Laconia, Indiana (4714 H11 Facility):

6. Provide the CNMP or NMP if one has been developed.
7. Provide all documents relating to the construction of the 4714 H11 Facility, including construction permits, construction plans and as-built drawings.
8. Provide a timeline for the construction and population of the 4714 H11 Facility.

9. If not included in the CNMP or NMP or one has not been developed, provide the following:
- a. copies of the lease or rental agreements for any land application fields where manure or process wastewater has been or will be applied;
 - b. copies of the most recent soil analysis for any field that received manure or process wastewater within the previous five years or will receive manure or process wastewater in the next growing season;
 - c. copies of the most recent manure analysis;
 - d. description of the methods and copies of the records for the calibration of land application equipment; and
 - e. copies of maps of the land application areas and any setbacks and surface drainage locations.
10. Have any of the facilities identified above transferred manure and/or process wastewater to another AFO, farm, or third-party? If so, provide the following information for each transfer.
- a. Recipient's identity and location where the manure and/or process wastewater was transferred (*i.e.*, recipient's name, farm/facility name, and farm/facility address, etc.);
 - b. Type of facility that received the transfer (*e.g.*, AFO (specify with or without crop fields), crop farm, or other facility);
 - c. Date of transfer;
 - d. Any documentation associated with the transfer;
 - e. Amount of manure and/or process wastewater transferred;
 - f. Identify the person/entity who/that approved the transfer; and
 - g. Identify the person(s) that physically pumped or conveyed the manure and/or process wastewater.

If you do not possess documentation of such transfers and cannot provide the requested information, provide a narrative response that identifies: transferred manure and/or process wastewater, the recipients of the transferred manure and/or process wastewater, and the person/entity that transferred the manure and/or process wastewater.

V. SUBMISSION OF INFORMATION

1. You must submit a response to this Information Request within 30 calendar days of receipt to:

U.S. Environmental Protection Agency
Attention: Joan Rogers
Water Enforcement and Compliance Assurance Branch
Water Division, WC-15J
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

2. You must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, which include the possibility of fine and imprisonment for knowing violations.

3. If you find at any time after submitting information to EPA that any portion of the submittal is false or incorrect, you must notify EPA immediately. Knowing submittal of false information to EPA in response to this Information Request may subject you to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), and 18 U.S.C. §§ 1001 and 1341.
4. EPA may use the information submitted in response to this Information Request in an administrative, civil or criminal action.
5. There can be significant civil or criminal penalties for failing to adequately respond to requests for information issued under the Section 308(a) of the CWA, 33 U.S.C. § 1318(a).
6. You must provide the information requested even though you may contend that it includes confidential information. You may assert a business confidentiality claim covering any portion of the information requested in this Information Request, as provided in 40 C.F.R. § 2.203(b). Effluent data (as defined in 40 C.F.R. § 2.302(A)(2)) and information in NPDES permit applications are not entitled to confidential treatment. 40 C.F.R. § 122.7.

To assert a confidentiality claim, you must submit the requested information and indicate that you are asserting a claim of confidentiality. You must mark any document over which you assert a claim of confidentiality by attaching a cover sheet stamped or typed with a legend indicating your intent to claim confidentiality. The stamped or typed legend, or other suitable form of notice, should employ language such as "confidential" or "business

confidential," and indicate a date, if any, when the information should no longer be treated as confidential. EPA will only disclose the information covered by such a claim to the extent permitted and by means of the procedures set forth in Section 308(b) of the CWA, 33 U.S.C. § 1318(b), and 40 C.F.R. Part 2. You must clearly identify allegedly confidential portions of otherwise non-confidential documents.

Please submit your response to this information request so that all non-confidential information, including any redacted versions of documents, is in one package and all materials for which you desire confidential treatment are in another package. EPA will construe the failure to furnish a confidentiality claim with your response as a waiver of that claim, and the information may be made available to the public without further notice to you. All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent.

If you assert a confidentiality claim for any of the information you submit to EPA, you bear the burden of substantiating that claim. EPA will give conclusory allegations little or no weight in its determination. For each document or response you claim confidential, you must separately address the following points:

- a. The portions of the information alleged to be entitled to confidential treatment;
- b. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. Measures taken by you to guard against the undesired disclosure of the information to others;
- d. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- e. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- f. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

Finally, EPA may disclose information which you submit in response to this Information Request to authorized representatives of the United States pursuant to 40 C.F.R. § 2.302(h) even if you assert that all or part of the information is confidential business information. Please be advised that EPA may disclose all responses to this Information Request to one or more private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If you are submitting information

which you assert is entitled to confidential treatment, you may comment on this potential disclosure to authorized representatives when you submit your response to this Information Request.

7. This Information Request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information from specific individuals or entities as part of an administrative action or investigation.
8. Please contact Joan Rogers by telephone at (312) 886-2785, or via email at rogers.joan@epa.gov, if you have any questions about this Information Request.

Date: February 7, 14

Tinka G. Hyde
Tinka G. Hyde
Director, Water Division